

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ELIZABETH HENDERSON,

Plaintiff,

vs.

BENICORP INSURANCE COMPANY, an
 Indiana corporation,

Defendant.

Case No. 2:05-cv-00716-RCJ-GWF

**REPORT AND
 RECOMMENDATION**

On November 18, 2010 and December 1, 2010, the Court scheduled status hearings in this action. The parties failed to attend these hearings. As a result, the Court ordered Plaintiff to file a status report stating whether she intended to move forward with this case or whether she wanted to dismiss this action. (#52)

In response, Plaintiff filed a status report stating that Defendant Benicorp Insurance Co., an Indiana corporation, has been declared insolvent by a state court in Indiana. (#53 at 2). The Indiana Court of competent jurisdiction over Benicorp Insurance Co. subsequently declared that Defendant was subject to the Court's receivership and control. (*Id.*) Plaintiff's current understanding is that Defendant's status in Indiana prevents her from recovering on her claims in the present action. (*Id.* at 3). As a result, the plaintiff recommends dismissal of this action. Accordingly,

RECOMMENDATION

IT IS HEREBY RECOMMENDED that Plaintiff's complaint be **dismissed without prejudice**. Plaintiff has voluntarily requested that this action be dismissed in light of Defendant Benicorp Insurance Co.'s being placed into receivership in Indiana.

...

NOTICE

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 15th day of December, 2010.



GEORGE FOLEY, JR.
United States Magistrate Judge